

STATE OF MICHIGAN
COURT OF APPEALS

In re PRICE, Minors.

UNPUBLISHED

July 21, 2015

No. 325129

Kalamazoo Circuit Court

Family Division

LC No. 2012-000439-NA

Before: WILDER, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor children, BP and KP, under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication), (c)(ii) (other conditions exist that cause the children to come within the court's jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), (j) (children will be harmed if returned to parent), and (l) (rights terminated to another child).¹ We affirm.

I

In August 2012, respondent gave birth to BP. At the time, respondent was on parole for an uttering and publishing conviction from 2006, and she was required to complete drug screens twice per month. In September 2012, respondent tested positive for methamphetamine. In October 2012, while respondent had a warrant out for her arrest for child neglect arising from unpaid child support, Children's Protective Services ("CPS") personnel and police officers went to respondent's residence. Respondent admitted that she used to be a methamphetamine user and that she had relapsed two weeks earlier. She submitted to a drug screen and tested positive for methamphetamine. It was also reported that mother's housing and the sleeping arrangements were unsafe for BP. BP was removed from respondent's care, and respondent was subsequently arrested and placed in jail on the outstanding warrant.

¹ Respondent erroneously states that the trial court also terminated her parental rights pursuant to MCL 712A.19b(3)(a)(ii) (parent deserted child for 91 or more days and has not sought custody). However, the trial court expressly found that this statutory ground had not been established by clear and convincing evidence.

Shortly thereafter, the Department of Health and Human Services (“DHHS”) filed a petition for child protective proceedings concerning BP. With regard to respondent, the petition alleged that respondent had tested positive for methamphetamine in September 2012, while she was the “sole care provider” for BP, that respondent admitted that she had a history of methamphetamine use and that she had used methamphetamine in October 2012, that respondent’s arrest had left BP without proper care and custody, and that BP did not have appropriate sleeping arrangements given his age, which exposed him to a substantial risk of harm. The trial court authorized the petition after a preliminary hearing on October 10, 2012.²

Respondent later signed a service agreement with CPS, under which she agreed to participate in services to address her mental health and substance abuse issues, participate in weekly substance abuse meetings while incarcerated, and complete and follow the recommendations of a psychological evaluation. She also signed an amended service agreement, under which she agreed to attend weekly meetings in the Lift Up Through Literacy Program through Kalamazoo Public Schools, continue to participate in services to address mental health and substance abuse issues, and actively engage in a parenting skills program.

Additionally, after the child protective proceedings with regard to BP were initiated, respondent became pregnant and gave birth to KP in July 2013. A petition was filed with regard to KP on July 25, 2013, which alleged, among other things, that respondent had two other children who had been placed in foster care, one of which was BP; that respondent’s participation in services was minimal; that respondent absconded from parole 10 times; that the psychological evaluator did not endorse returning mother’s children to her care; and that respondent tested positive for methamphetamine in April 2013, was arrested in May 2013 for violating parole, and was subsequently taken to a treatment program. The trial court authorized the petition and released KP to respondent, as respondent was in a 90-day treatment program at Pine Rest Freedom House at the time. When respondent was released from Pine Rest in August 2013, KP was removed from respondent’s care and placed in foster care. In an amended petition that was filed and authorized with respect to KP, it was alleged, inter alia, that respondent completed “some” of her treatment plans and goals at Pine Rest, but “she seem[ed] unprepared for some of the struggles she will face”; that respondent was unable to care for her own basic needs and failed to take responsibility for her life; that respondent had an extensive criminal history; and that respondent was unemployed and unable to financially support herself or provide for the basic needs of herself and KP.

Between October 2012 and March 2014, respondent absconded from parole numerous times and was unable to be located on multiple occasions. Likewise, she was arrested for absconding from or violating her parole three times and was frequently in and out of jail throughout the course of the proceedings. During one instance when she was arrested, her parole officer indicated that police officers found respondent hiding in the basement at a house where

² Subsequently, an amended petition was filed, which included the initial allegations and also alleged that respondent tested positive for methamphetamine on October 5, 2012, while she was the sole care provider for BP.

methamphetamine was allegedly being sold. Although she participated in drug treatment programs, including the 90-day treatment program at Pine Rest Freedom House, and Narcotics Anonymous/Alcoholics Anonymous programs, she continued to struggle with substance abuse. In March 2014, respondent was arrested on a new methamphetamine charge a few days after she was released from Pine Rest. On May 5, 2014, she was sentenced to 1 to 20 years' imprisonment after pleading guilty to two counts of possession of methamphetamine. In addition, respondent's contact with the children was very sporadic.

On May 31, 2014, DHHS filed a supplemental petition seeking termination of respondent's parental rights to BP and KP pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), and (j). On October 3, 2013, a termination hearing was held, during which DHS foster care worker Sonya Evans noted respondent's significant criminal record and ongoing substance abuse issues, testifying that respondent typically did well in a structured environment but "[fell] apart" when the structure was gone. She also testified that respondent's barriers to reunification with her children were substance abuse; emotional instability, which was related to her methamphetamine use; lack of parenting skills, as demonstrated by respondent's sporadic visits with the children and minimal participation in parenting classes; lack of housing; and lack of employment. The trial court also heard testimony from KP's paternal grandmother, who expressed concerns with respondent's drug use, but testified that respondent had telephone and written contact with KP and had been a "real good mom" when KP was in her care; Terry Jones, a substance abuse counsel with the residential substance abuse treatment program ("RSAT") at the Women's Huron Valley Correctional Facility, who testified regarding the application procedures, activities, and success rate of the program and respondent's prognosis; and respondent, who admitted that she had a problem and that she took full responsibility for her actions, but asserted that she was ready to change, finally clean, and would be able to parent once she was released from prison.

On November 13, 2014, the trial court issued an opinion and order terminating respondent's parental rights to BP and KP, finding that a statutory basis for termination existed under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (j), and (l). The trial court also found that termination was in the best interests of the children based on the stability and safety of BP's placement with his father and KP's placement with his paternal grandmother, the poor likelihood of respondent's rehabilitation, respondent's limited contact with both children, respondent's nonexistent bond with KP, and respondent's limited bond with BP.³

II

Respondent first argues that the trial court erred in finding clear and convincing evidence sufficient to terminate her parental rights because it failed to consider the positive steps that she was taking to overcome her addiction and become reunited with her children. We disagree.

³ The trial court also terminated the parental rights of KP's father, but he is not a party to this appeal.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination under MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). “A finding is clearly erroneous [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747, 751 (2010) (quotation marks and citation omitted; alteration in original).

In relevant part, MCL 712A.19b(3) permits termination of parental rights under the following circumstances:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(I) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

On appeal, respondent notes, as evidence of her progress, the testimony provided by Jones regarding the success of the RSAT program and respondent's "fair" prognosis; the testimony offered by KP's paternal grandmother regarding respondent's written contact with KP, respondent's "great love" for KP, and the grandmother's opinion of respondent's care of KP; the testimony provided by the DHS foster care case worker regarding respondent's care for KP while she was at Pine Rest Freedom House; and respondent's own testimony, during which she took full responsibility for her actions and described her improvement and activities during her incarceration.

However, despite this testimony, the record clearly shows that respondent continued to struggle with unresolved substance abuse issues throughout the proceedings. Because of her addiction to methamphetamine, she was incarcerated numerous times, including at the time of the termination hearing. It was apparent that respondent was only able to control her substance abuse issues in structured environments, and she often relapsed shortly after being released from jail or a treatment program. Because she was frequently incarcerated, respondent failed to complete or participate in many of the services that were offered to address her parenting skills and ability to care for the children. Further, she never obtained stable housing or employment. Therefore, the evidence supported the trial court's finding that respondent was unable to provide proper care and custody for the children. See MCL 712A.19b(3)(g). Likewise, for the same reasons, it is evident that the conditions that led to adjudication, which included ongoing substance abuse and a related inability to adequately care and provide for the children, continued to exist at the time of the termination hearing. See MCL 712A.19b(3)(c)(i).

Moreover, the evidence in the record indicated that there was no reasonable expectation that respondent would "be able to provide care and custody within a reasonable time considering" the children's young ages, see MCL 712A.19b(3)(g), and that "there [was] no reasonable likelihood that the conditions [that led to adjudication would] be rectified within a reasonable time" given the children's ages, see MCL 712A.19b(3)(c)(i). The children had been under the court's jurisdiction for the majority of their lives. Respondent's earliest release date from prison was more than six months from the time of the termination hearing, and it was likely that respondent would spend another year in an aftercare program upon her release. Further, given respondent's history of continued drug use and criminal activity, a change in her ability to provide for the minor children was only a "mere possibility." See *In re Williams*, 286 Mich App 253, 273; 779 NW2d 286 (2009). Thus, the trial court did not clearly err in finding that a statutory basis for termination had been established under MCL 712A.19b(3)(c)(i) and (g) by clear and convincing evidence. Because we conclude that the trial court properly found that a statutory basis for termination existed under those provisions, we need not consider the additional grounds upon which the trial court based its decision. *In re Moss*, 301 Mich App at 80.

III

Respondent next argues that the trial court clearly erred in finding that termination was in the best interests of the children despite the fact that the children were placed with relatives at the time of the termination hearing. We disagree.

Pursuant to MCL 712A.19b(5),

[t]he trial court must order the parent's rights terminated if the [petitioner] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests. We review for clear error the trial court's determination regarding the children's best interests. [*In re White*, 303 Mich App at 713 (footnotes omitted).]

In deciding a child's best interests, a court may consider the child's bond to her parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *Id.*; *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "The trial court may also consider . . . the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. A child's placement with relatives is an "explicit factor" that the trial court must consider when making a best-interest determination. *In re Olive/Metts*, 297 Mich App at 43, citing MCL 712A.19a(6). However, even if a child is in the care of a relative, a trial court may nevertheless terminate a respondent's parental rights if it determines that termination is in the child's best interests. *Id.*

Here, the trial court expressly recognized in its best-interest determination that the minor children were placed with relatives at the time of termination, BP with his father and KP with his paternal grandmother.⁴ Nevertheless, the trial court found that termination of respondent's parental rights was in their best interests despite the children's placement with relatives. As the trial court concluded, the children did not have an established relationship with respondent; at the time of termination, she had not had face-to-face contact with them in more than a year. Although respondent wrote letters to the children and spoke to them on the telephone, she was barely involved in their lives because of her repeated incarcerations. Moreover, based on respondent's criminal history and unresolved substance abuse issues, there is no indication in the record that she would be able to provide permanency and stability for the children in the foreseeable future. See *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Oppositely, as the trial court noted, the record indicates that BP's father and KP's grandmother provided a stable and safe home environment for each child. Thus, the trial court did not clearly

⁴ We note that a child's parent is not included under the definition of "relative" that applies to MCL 712A.19a. See MCL 712A.13a(1)(j). Accordingly, the trial court was not required to consider BP's placement with his father as a "relative placement" when it determined whether termination of respondent's parental rights was in BP's best interests.

err in finding that it was in the best interests of the children to terminate respondent's parental rights.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Douglas B. Shapiro

/s/ Amy Ronayne Krause